



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1048]

RIN 1625-AA00

Safety Zone; Kosciuszko Bridge Construction, Newtown Creek, Brooklyn and Queens, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two safety zones on the navigable waters of Newtown Creek, NY. The first safety zone is within 500 feet of the two barges and assist vessels to be used for the removal and loading of the existing center span from the Kosciuszko Bridge at mile 2.1. The second is from approximately 370 yards south (upstream) of the Kosciuszko Bridge at mile 2.1 and Newtown Creek's confluence with the East River at mile 0.0 during transport of the existing center span to an offsite location. This action is necessary to provide for the safety of life on these navigable waters during the lowering and securing of the existing bridge's center span onto two barges within the Federal navigation channel and during the barge's outbound transit through Newtown Creek to the East River, tentatively scheduled on June 21-22, 2017. This rulemaking prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1048 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Sector New York Waterways Management Division; telephone 718-354-4195, email jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port New York
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FDNY	New York City Fire Department
FR	Federal Register
NPRM	Notice of proposed rulemaking
NYSDOT	New York State Department of Transportation
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard issued a Bridge Permit dated August 21, 2013 approving the location and construction of the Kosciuszko Bridge across Newtown Creek, mile 2.1, between the Boroughs of Queens and Brooklyn, NY. On November 29, 2016, NYSDOT notified the Coast Guard that it will be lowering the existing center span from the Kosciuszko Bridge over Newtown Creek at mile 2.1 onto two barges within the Newtown Creek Federal navigation channel, securing the center span to the barges for transit, rotating the barges, and towing the barges through Newtown Creek to the East River for final upland disposal.

In response, on February 22, 2017, the Coast Guard published a NPRM titled “Safety Zone; Kosciuszko Bridge Construction, Newtown Creek, Brooklyn and Queens, NY” (82 FR 11332). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this bridge project. During the comment period that ended March 24, 2017, we received no comments.

On May 1, 2017, the contractor provided June 21-22 as the expected primary dates for the removal and loading of the existing center span onto two barges. The contractor has informed the Coast Guard that the backup dates for the removal and transport of the existing center are June 28-29 and July 5-6, 2017.

The Coast Guard is making this temporary rule effective less than 30 days after publication in the Federal Register pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication for good cause. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be impracticable and contrary to the public interest. It is impracticable and contrary to the public interest to provide a full 30-days notice because this rule must be effective on June 21-22, 2017 due to favorable tides on that day necessary for the barge transits. If this rule is not made effective by this date, then it would inhibit the Coast Guard’s ability to perform its statutory mission to ensure the safety of the maritime public. Though we are not providing a full 30 day notice period before the rule becomes effective, the Coast Guard did provide notice and opportunity to comment through the NPRM process.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with these operations will be a safety concern for anyone within a 500-foot radius of the tugs and barges. The purpose of this rule is to ensure safety of vessels and the navigable waters within a 500-foot radius of the two barges and assist vessels when loading, securing, and transporting the center span of the Kosciuszko Bridge through Newtown Creek before, during, and after the operations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 22, 2017. There are no changes to the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from June 21 through December 31, 2017. The safety zone will cover all navigable waters of Newtown Creek within 500 feet of the two barges and assist vessels to be used for the removal and loading of the existing center span from the Kosciuszko Bridge at mile 2.1, within 500 feet of two barges and their assist vessels in Newtown Creek from approximately 370 yards south (upstream) of the existing Kosciuszko Bridge at mile 2.1 and Newtown Creek's confluence with the East River during transport of the existing center span to an offsite location. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the loading, securing, rotating the two barges for transit tentatively scheduled on June 21, 2017, and transporting the center span of the Kosciuszko Bridge through Newtown Creek tentatively scheduled on June 22, 2017. Backup dates for these operations are June 28-29 and July 5-6, 2017.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zones. Although vessel traffic will not be able to transit around these safety zones as the two barges carrying the Kosciuszko Bridge center span will block a minimum of 109 feet of the 130 foot wide Federal navigation channel, enforcement of the safety will be limited in duration. It is anticipated the entire operation of loading the Kosciuszko Bridge center span, securing the span on the barges, rotating the barges, and towing through Newtown Creek should last no longer than 48 hours. During the lowering and securing of the center span and the approximate one-hour transit time from the bridge site to the East River vessels will not be able to meet or overtake the two barges with three assist tugs as the combined width of these vessels will be 109 feet and the Federal navigation channel is only 130 feet wide. However, the known waterway users upstream of the bridge including the New York City Department of Environmental Protection, U.S. Concrete, Bayside Fuel Oil Depot, and the U.S. Environmental Protection Agency all reported the requested 48-hour channel closure will not negatively impact their operations. U.S. Concrete stated they require at least two weeks’ notice if the closure is anticipated to last longer than 48 hours. Facilities downstream of the bridge will not be required to move vessels moored at their

facility as long as they do not extend into the Federal navigation channel and would be able to depart the facility before, or after, the two barges carrying the bridge span are towed past the facility. Moreover, the Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and

Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a stationary safety zone lasting approximately 48 hours, a moving safety zone lasting approximately one hour that will prohibit transit within 500 feet of the two barges and assist vessels carrying the bridge span, and a stationary safety zone lasting approximately three hours that will prohibit transit within 600 feet of the existing bridge during explosives demolition operations at each onshore approach span. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) for Categorically Excluded Actions is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1048 to read as follows:

§165.T01-1048 Safety Zone; Kosciuszko Bridge Construction, Newtown Creek, Brooklyn and Queens, NY.

- (a) Location. (1) The following area is a safety zone: All waters from surface to bottom of Newtown Creek within 500 feet of the two barges and assist vessels while lowering and securing the existing Kosciuszko Bridge center span at mile 2.1 to the two barges. This area is bound by the following approximate positions: northwest of a line drawn from 40°43'34.9"N., 073°55'42.0"W. to 40°43'36.8"N., 073°55'39.8"W. (approximately 500 feet south (upstream) of the Kosciuszko Bridge at mile 2.1), and southeast of a line drawn from 40°43'40.6"N., 073°55'52.8"W. to 40°43'43.1"N., 073°55'49.9"W. (approximately 500 feet downstream of the Kosciuszko Bridge at mile 2.1) (NAD 83).

(2) The following area is a moving safety zone: All waters from surface to bottom of Newtown Creek within 500 feet of the two barges and assist vessels while transiting Newtown Creek between Latitude 40°43'30.0"N. (approximately 370 yards south (upstream) of the Kosciuszko Bridge at mile 2.1), and east of a line drawn from the following approximate positions: 40°44'17.1"N., 073°57'45.6"W. to 40°44'10.4"N., 073°57'45.6"W. (at the confluence with the East River) (NAD 83).

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP to act on his or her behalf. A designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement Periods. (1) This safety zone is effective from June 21, 2017 to

December 31, 2017 but will only be enforced when active center span lowering, securing, and towing operations are in progress.

(2) The Coast Guard will rely on marine broadcasts and local notice to mariners to notify the public of the time and duration that the safety zone will be enforced. Violations of this safety zone may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the

following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: June 1, 2017

Michael H. Day,
Captain, U.S. Coast Guard,
Captain of the Port New York.

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